

AMENDED IN SENATE JULY 10, 1995
AMENDED IN ASSEMBLY APRIL 24, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 828

Introduced by Assembly Member Conroy

February 22, 1995

An act to ~~add Section 495.6 to~~ *amend and repeal Sections 489 and 495 of, to add Section 495.6 to, and to repeal Sections 495.5 and 2882.5 of,* the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 828, as amended, Conroy. Telecommunications: service options.

Under existing law, every public utility other than a common carrier is required to file with the commission, and to print and keep open for public inspection, all rates, tolls, rentals, charges, and classifications, and all rules, contracts, privileges, and facilities as they relate to rates, tolls, rentals, charges, classifications, or services, and to comply with rules and regulations adopted by the commission with respect to rate changes.

Existing law, until January 1, 1998, authorizes the commission, by rule or order, to waive for certain classes of telephone corporations the above filing requirements, in full or in part, for telephone services defined as enhanced services by the commission.

This bill would permit the commission, by rule or order, to partially or completely exempt telecommunications services offered by telephone or telegraph corporations from the above rate change requirements if the commission determines that the provider of the service lacks significant market power in the market for that service or that sufficient consumer protections exist, and to revoke any exemption so granted.

The bill would require the commission to establish enumerated consumer protection rules for the exempted services, and would require the commission to report to the Legislature by January 1, 1997, on its consumer protection rules and implementation procedures to allow telephone corporations to be exempted from the tariffing requirements.

Because violations of orders, decisions, rules, or other requirements of the Public Utilities Commission are misdemeanors, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 489 of the Public Utilities Code,*
2 *as amended by Section 2 of Chapter 980 of the Statutes of*
3 *1992, is amended to read:*

4 489. (a) The commission shall, by rule or order,
5 require every public utility other than a common carrier
6 to file with the commission within the time and in the
7 form as the commission designates, and to print and keep
8 open to public inspection, schedules showing all rates,
9 tolls, rentals, charges, and classifications collected or
10 enforced, or to be collected or enforced, together with all
11 rules, contracts, privileges, and facilities which in any



1 manner affect or relate to rates, tolls, rentals,
2 classifications, or service. Nothing in this section shall
3 prevent the commission from approving or fixing rates,
4 tolls, rentals, or charges, from time to time, in excess of or
5 less than those shown by the schedules.

6 (b) The commission shall, by rule or order, require
7 every telephone corporation operating within a service
8 area, on first contact by a prospective subscriber and in
9 subsequent contacts by the subscriber for the purpose of
10 changing service, to fully inform the subscriber of the
11 basic services available to the class of subscribers to which
12 the subscriber belongs. For eligible residential
13 subscribers, these services shall include universal lifeline
14 telephone service. The subscriber shall be presented with
15 information orally, in print form, or in computer data
16 form, according to the means by which contact is
17 established. If after a hearing, the commission finds that
18 any telephone corporation has not provided prospective
19 subscribers with the information required by this section,
20 the commission may make an appropriate adjustment of
21 the telephone corporation's rates or impose penalties
22 pursuant to other provisions of law.

23 ~~(e) Except where subdivision (d) or (e) applies, the~~
24 ~~commission may, by rule or order, partially or completely~~
25 ~~exempt enhanced services offered by telephone or~~
26 ~~telegraph corporations from the requirements of~~
27 ~~subdivision (a) if the commission determines that the~~
28 ~~provider of the enhanced service lacks significant market~~
29 ~~power in the market for that service. The commission, by~~
30 ~~rule or order, may revoke any exemption granted under~~
31 ~~this subdivision.~~

32 ~~(d) After the provisions of subdivision (c) of Section~~
33 ~~2282.5 have been satisfied for a particular enhanced~~
34 ~~service, and upon a determination that the local exchange~~
35 ~~telephone corporation, or its subsidiaries and affiliates~~
36 ~~which offer that enhanced service, lacks significant~~
37 ~~market power in the market for that enhanced service,~~
38 ~~the commission may exempt the local exchange~~
39 ~~telephone corporation, its subsidiary, or affiliate from the~~
40 ~~requirements of subdivision (a) in whole or in part for~~

1 ~~that enhanced service, if they are subject to commission~~
2 ~~jurisdiction under subdivision (a) of Section 216, or~~
3 ~~Section 233 or 234. Nothing in this subdivision shall be~~
4 ~~interpreted to require the commission to implement the~~
5 ~~provisions of subdivision (e) of Section 2282.5 on a service~~
6 ~~by service basis only.~~

7 ~~(e) If the commission grants an exemption from~~
8 ~~subdivision (a) to a local exchange telephone corporation~~
9 ~~for an enhanced service, the commission shall~~
10 ~~simultaneously grant a similar exemption to all other~~
11 ~~telephone or telegraph corporations providing the same~~
12 ~~or comparable service in the same market. The~~
13 ~~commission may, by rule or order, revoke any exemption~~
14 ~~granted under this subdivision.~~

15 ~~(f) The commission may exempt local exchange~~
16 ~~telephone corporations serving less than 500,000 access~~
17 ~~lines from the requirements of subdivision (d), in which~~
18 ~~event subdivision (e) shall not be applicable.~~

19 ~~(g) For purposes of this section, enhanced services are~~
20 ~~defined as services offered over telephone or telegraph~~
21 ~~lines that employ computer processing applications that~~
22 ~~act on format, content, code, protocol, or similar aspects~~
23 ~~of the subscriber's transmitted information; provide the~~
24 ~~subscriber additional, different, or restructured~~
25 ~~information; or involve subscriber interaction with stored~~
26 ~~information.~~

27 ~~(h) Nothing in this section shall require that the~~
28 ~~commission exempt any enhanced service or enhanced~~
29 ~~service provider from the requirements of subdivision~~
30 ~~(a), nor shall this section limit the authority of the~~
31 ~~commission to require telephone or telegraph~~
32 ~~corporations to provide it with contemporaneous~~
33 ~~information about the current terms, conditions, and~~
34 ~~prices under which enhanced services exempted, in~~
35 ~~whole or in part, from the requirements of subdivision~~
36 ~~(a), are being offered to subscribers.~~

37 ~~(i) This section shall remain in effect only until~~
38 ~~January 1, 1998, and as of that date is repealed, unless a~~
39 ~~later enacted statute, which is enacted before January 1,~~
40 ~~1998, deletes or extends that date.~~

1 *SEC. 2. Section 489 of the Public Utilities Code, as*
2 *added by Section 2.5 of Chapter 980 of the Statutes of*
3 *1992, is repealed.*

4 ~~489. (a) The commission shall, by rule or order,~~
5 ~~require every public utility other than a common carrier~~
6 ~~to file with the commission within the time and in the~~
7 ~~form as the commission designates, and to print and keep~~
8 ~~open to public inspection, schedules showing all rates,~~
9 ~~tolls, rentals, charges, and classifications collected or~~
10 ~~enforced, or to be collected or enforced, together with all~~
11 ~~rules, contracts, privileges, and facilities which in any~~
12 ~~manner affect or relate to rates, tolls, rentals,~~
13 ~~classifications, or service. Nothing in this section shall~~
14 ~~prevent the commission from approving or fixing rates,~~
15 ~~tolls, rentals, or charges, from time to time, in excess of or~~
16 ~~less than those shown by the schedules.~~

17 ~~(b) The commission shall, by rule or order, require~~
18 ~~every telephone corporation operating within a service~~
19 ~~area, on first contact by a prospective subscriber and in~~
20 ~~subsequent contacts by the subscriber for the purpose of~~
21 ~~changing service, to fully inform the subscriber of the~~
22 ~~basic services available to the class of subscribers to which~~
23 ~~the subscriber belongs. For eligible residential~~
24 ~~subscribers, these services shall include universal lifeline~~
25 ~~telephone service. The subscriber shall be presented with~~
26 ~~information orally, in print form, or in computer data~~
27 ~~form, according to the means by which contact is~~
28 ~~established. If after a hearing, the commission finds that~~
29 ~~any telephone corporation has not provided prospective~~
30 ~~subscribers with the information required by this section,~~
31 ~~the commission may make an appropriate adjustment of~~
32 ~~the telephone corporation's rates or impose penalties~~
33 ~~pursuant to other provisions of law.~~

34 ~~This section shall become operative January 1, 1998.~~

35 *SEC. 3. Section 495 of the Public Utilities Code, as*
36 *amended by Section 3 of Chapter 980 of the Statutes of*
37 *1992, is amended to read:*

38 495. Every telegraph and telephone corporation shall
39 print and file with the commission schedules showing all
40 the rates and classifications for the transmission of

1 messages or conversations between all of the following
2 points, unless otherwise exempted, in whole or in part,
3 from the filing requirements of subdivision (a) of Section
4 489:

5 (a) Between all points within this state and all points
6 outside the state upon its route.

7 (b) Between all points within this state and all points
8 outside the state upon every route leased, operated, or
9 controlled by it.

10 (c) Between all points on its route or upon any route,
11 leased, operated, or controlled by it within this state and
12 all points outside the state upon the route of any other
13 telegraph or telephone corporation, whenever a through
14 route and joint rate have been established between any
15 two of these points.

16 ~~(d) This section shall remain in effect only until~~
17 ~~January 1, 1998, and as of that date is repealed, unless a~~
18 ~~later enacted statute, which is enacted before January 1,~~
19 ~~1998, deletes or extends that date.~~

20 *SEC. 4. Section 495 of the Public Utilities Code, as*
21 *added by Section 3.5 of Chapter 980 of the Statutes of*
22 *1992, is repealed.*

23 ~~495. Every telegraph and telephone corporation shall~~
24 ~~print and file with the commission schedules showing all~~
25 ~~the rates and classifications for the transmission of~~
26 ~~messages or conversations between all of the following~~
27 ~~points unless otherwise exempted, in whole or in part,~~
28 ~~from the filing requirements of subdivision (a) of Section~~
29 ~~489:~~

30 ~~(a) Between all points within this state and all points~~
31 ~~outside the state upon its route.~~

32 ~~(b) Between all points within this state and all points~~
33 ~~outside the state upon every route leased, operated, or~~
34 ~~controlled by it.~~

35 ~~(c) Between all points on its route or upon any route,~~
36 ~~leased, operated, or controlled by it within this state and~~
37 ~~all points outside the state upon the route of any other~~
38 ~~telegraph or telephone corporation, whenever a through~~
39 ~~route and joint rate have been established between any~~
40 ~~two of these points.~~

~~(d) This section shall become operative January 1, 1998.~~

SEC. 5. Section 495.5 of the Public Utilities Code is repealed.

~~495.5. The commission shall provide the Legislature, on or before December 1, 1993, and annually thereafter, a report summarizing all of the following:~~

~~(a) All applications for exemption, in whole or in part, from subdivision (a) of Section 498, filed with the commission during the preceding year.~~

~~(b) All commission rulings or orders granting partial or complete exemptions from subdivision (a) of Section 489.~~

~~(c) Any real or potential impacts of cross-subsidization by local exchange carriers resulting from the partial or full waiver of tariffs for their enhanced service offerings.~~

~~(d) (1) In the annual report required by this section that is due December 1, 1996, the commission shall, in addition to the other requirements of this section, provide the Legislature with findings as to the impact of commission exemption of enhanced services from the tariff filing requirements, in whole or in part, of subdivision (a) of Section 489.~~

~~(2) The report shall include all of the following:~~

~~(A) Commission findings as to the effectiveness of subdivision (c) of Section 489.~~

~~(B) Commission recommendations as to whether the provisions of subdivision (c) of Section 489 should be extended beyond January 1, 1998.~~

SEC. 6. Section 495.6 is added to the Public Utilities Code, to read:

495.6. (a) The commission may, by rule or order, establish procedures to allow telephone or telegraph corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495.

(b) The commission may, by rule or order, partially or completely exempt certain telecommunications services, except residential basic exchange service offered by telephone or telegraph corporations, from the tariffing

1 requirements of Sections 454, 489, 491, and 495 if either of
2 the following conditions is met:

3 (1) The commission—~~determines~~ *finds* that the
4 telephone corporation lacks significant market power in
5 the market for that service for which an exemption from
6 Sections 454, 489, 491, and 495 is being requested. Criteria
7 to determine market power shall include, but not be
8 limited to, the following: company size, market share, and
9 type of service for which an exemption is being
10 requested. The commission shall promulgate rules for
11 determining market power based on these and other
12 appropriate criteria.

13 (2) The *Commission finds that a telephone*
14 *corporation is offering a service in a given market for*
15 *which competitive alternatives are available to most*
16 *consumers, and the* commission has determined that
17 sufficient consumer protections exist in the form of rules
18 and enforcement mechanisms to minimize the risk to
19 consumers and competition from unfair competition or
20 anticompetitive behavior in the market for the
21 *competitive* telecommunications service for which a
22 provider is requesting an exemption from Sections 454,
23 489, 491, and 495. This paragraph does not apply to
24 monopoly services for which the commission retains
25 exclusive authority to set or change rates.

26 (c) Before implementing procedures to allow
27 telephone corporations to apply for the exemption of
28 certain telecommunications services from the tariffing
29 requirements of Sections 454, 489, 491, and 495, and no
30 later than September 30, 1996, the commission shall
31 establish consumer protection rules for those exempted
32 services that include, but are not limited to:

33 (1) Rules regarding the availability of rates, terms, and
34 conditions of service to consumers.

35 (2) Rules regarding notices to consumers of rate
36 increases and decreases, changes in terms and conditions
37 of service, and change of ownership.

38 (3) Rules to identify and eliminate unacceptable
39 marketing practices including, but not limited to,
40 fraudulent marketing practices.

1 (4) Rules to assure that aggrieved consumers have
2 speedy, low-cost, and effective avenues available to seek
3 relief in a reasonable time.

4 (5) Rules to assure consumers that their right to
5 informational privacy for services over which the
6 commission has oversight.

7 (6) Rules to assure a telephone corporation's
8 cooperation with the commission investigations of
9 customer complaints.

10 (d) *Prior to granting every exemption from the*
11 *tariffing requirements of Sections 454, 489, 491, and 495,*
12 *the commission shall find that there is no improper*
13 *cross-subsidization or anticompetitive behavior in*
14 *connection with the service for which an exemption is*
15 *requested.*

16 (e) The commission shall report to the Legislature by
17 January 1, 1997, on its consumer protection rules and
18 implementation procedures to allow telephone
19 corporations to be exempted from the tariffing
20 requirements of Sections 454, 489, 491, and 495.

21 ~~(e)~~

22 (f) Nothing in this section shall require that the
23 commission exempt any telecommunications service or
24 telecommunications service provider from the
25 requirements of Sections 454, 489, 491, and 495, nor shall
26 this section limit the authority of the commission to
27 require telephone corporations to provide it with
28 contemporaneous information about the current terms,
29 conditions, and prices under which telecommunications
30 services exempted, in whole or in part, from Sections 454,
31 489, 491, and 495 are being offered to subscribers.

32 ~~(f)~~

33 (g) The commission, after notice and hearing if
34 requested, may cancel, revoke, or suspend any exemption
35 granted under subdivision (b) to any telephone
36 corporation that fails to comply with any of the rules
37 established by the commission pursuant to subdivision
38 (c).

39 ~~(g)~~

1 (h) Any telecommunications service exempted from
2 the tariffing requirements of Sections 454, 489, 491, and
3 495 shall not be subject to the limitation on damages that
4 applies to tariffed telecommunications services.

5 ~~(h)–~~

6 (i) The provisions of this section do not apply to
7 commercial mobile services as defined by the Omnibus
8 Budget Reconciliation Act of 1993 (Public Law 103-66).

9 ~~SEC. 2.—~~

10 *SEC. 7. Section 2882.5 of the Public Utilities Code, as*
11 *added by Section 185 of Chapter 146 of the Statutes of*
12 *1994, is repealed.*

13 ~~2882.5. (a) The following conditions apply to the~~
14 ~~offering of enhanced services by local exchange~~
15 ~~telephone corporations, their subsidiaries, and affiliates:~~

16 ~~(1) To the extent that the local exchange telephone~~
17 ~~corporation's facilities, information, assets, and personnel~~
18 ~~are utilized in the offering of enhanced services, the local~~
19 ~~exchange telephone corporation's basic telephone~~
20 ~~service operations shall be not less than fully~~
21 ~~compensated for their use.~~

22 ~~(2) Cross-subsidy of the enhanced services by the~~
23 ~~noncompetitive services offered by the local exchange~~
24 ~~telephone corporation is prohibited. When the local~~
25 ~~exchange telephone corporation requests authority to~~
26 ~~offer an enhanced service, the commission shall analyze~~
27 ~~that request, hold hearings if appropriate, and impose~~
28 ~~safeguards that will prevent this type of cross-subsidy~~
29 ~~from occurring. However, the commission may expressly~~
30 ~~authorize cross-subsidy of noncompetitive enhanced~~
31 ~~services when necessary for the public's health and safety,~~
32 ~~or to provide necessary information to consumers~~
33 ~~concerning the telecommunications network.~~

34 ~~(3) Anticompetitive behavior by the local exchange~~
35 ~~telephone corporation with respect to enhanced services~~
36 ~~is prohibited. When the local exchange telephone~~
37 ~~corporation requests authority to offer an enhanced~~
38 ~~service, the commission shall analyze that request, hold~~
39 ~~hearings if appropriate, and have in place whatever~~

1 ~~safeguards are necessary to prevent anticompetitive~~
2 ~~behavior from occurring.~~

3 ~~(b) To the extent that accounting mechanisms are~~
4 ~~utilized to achieve the purposes of this section, the~~
5 ~~commission shall perform, or cause to be performed,~~
6 ~~annual audits to ensure compliance with subdivision (a).~~
7 ~~The audits shall specifically examine each enhanced~~
8 ~~service for which the commission has granted an~~
9 ~~exemption from subdivision (a) of Section 489. The~~
10 ~~commission may determine that other audits required or~~
11 ~~performed by the commission, or independent audits~~
12 ~~required by the Federal Communications Commission,~~
13 ~~are directly applicable to the intrastate operations under~~
14 ~~review and satisfy this requirement. Upon request, the~~
15 ~~audits shall be made available consistent with the~~
16 ~~commission's procedures for handling proprietary~~
17 ~~information. The commission may impose additional~~
18 ~~conditions that are not in conflict with the above~~
19 ~~provisions.~~

20 ~~(c) To the extent necessary to ensure that competition~~
21 ~~in enhanced service markets is fair, the commission shall~~
22 ~~do all of the following:~~

23 ~~(1) Ensure nondiscriminatory access by all enhanced~~
24 ~~service providers to the local exchange~~
25 ~~telecommunications network capabilities, including~~
26 ~~network billing services, on equivalent terms, conditions,~~
27 ~~price, and quality as are made available to the local~~
28 ~~exchange telephone corporation's enhanced services~~
29 ~~operations, affiliates, subsidiaries, partners, and joint~~
30 ~~ventures.~~

31 ~~(2) Disaggregate and price the elemental capabilities~~
32 ~~of the local exchange telephone corporation's telephone~~
33 ~~network.~~

34 ~~(3) Consider whether the local exchange telephone~~
35 ~~corporation's customer proprietary network information~~
36 ~~and services that are ancillary to the local exchange~~
37 ~~telecommunications network capabilities should be made~~
38 ~~available to all enhanced service providers.~~

39 ~~(4) Implement any other procedures that are~~
40 ~~necessary to ensure fair competition.~~

~~(d) The commission may exempt local exchange telephone corporations serving less than 500,000 access lines from subdivisions (b) and (c).~~

~~(e) If a local exchange telephone corporation is found by the commission or any court of competent jurisdiction to have improperly and materially cross-subsidized an enhanced service or to have behaved in an unlawfully anticompetitive manner in the offering of an enhanced service, any exemption from subdivision (a) of Section 489 granted by the commission to that local exchange telephone corporation for that enhanced service shall be revoked. The commission shall consider the impact of the cross-subsidy on consumers, competitors, and the market for that enhanced service when determining whether a cross-subsidy is material. Twelve months subsequent to the revocation of the exemption, the local exchange telephone corporation may reapply to the commission for an exemption from subdivision (a) of Section 489.~~

~~(f) Nothing in this section shall limit the commission's authority to impose other sanctions on the local exchange telephone corporation, including fines or penalties, or both, for violations of this section. The fines or penalties, or both, shall not be recoverable from ratepayers. The commission shall consider handling complaints about cross-subsidy or anticompetitive behavior on an expedited basis.~~

~~(g) For purposes of this section, enhanced services are defined as services offered over telecommunications facilities that employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.~~

~~(h) Nothing in this section shall be construed to limit the authority of the commission to perform its duties, including resolving consumer complaints, in relation to any services offered.~~

~~(i) Nothing in this section shall require that the commission exempt any enhanced service or enhanced~~

1 ~~service provider from subdivision (a) of Section 489. The~~
2 ~~commission shall have the authority to revoke at any time~~
3 ~~any exemptions granted pursuant to this section.~~

4 ~~(j) Nothing in this section limits the authority of the~~
5 ~~commission to protect customers' privacy.~~

6 ~~(k) The commission shall report to the Legislature on~~
7 ~~a timely basis if any of the penalty provisions of~~
8 ~~subdivision (e) or (f) are invoked.~~

9 ~~(l) This section shall remain in effect only until~~
10 ~~January 1, 1998, and as of that date is repealed, unless a~~
11 ~~later enacted statute, which is enacted before January 1,~~
12 ~~1998, deletes or extends that date.~~

13 *SEC. 8.* No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

23 Notwithstanding Section 17580 of the Government
24 Code, unless otherwise specified, the provisions of this act
25 shall become operative on the same date that the act
26 takes effect pursuant to the California Constitution.